



**Office of the Attorney General  
State of Texas**

May 31, 1995

**DAN MORALES**  
ATTORNEY GENERAL

Ms. Brenda F. Arnett  
Executive Director  
Texas Department of Commerce  
P.O. Box 12728  
Austin, Texas 78711-2728

Letter Opinion No. 95-040

Re: Whether a member of the board of directors of a statewide certified development corporation created by the Department of Commerce pursuant to section 481.077 of the Government Code is immune from personal liability by virtue of section 481.051 of the Government Code (ID# 31981)

Dear Ms. Arnett:

You ask whether a member of the board of directors of the Capital Certified Development Corporation, a statewide certified development corporation created pursuant to section 481.077 of the Government Code, is immune from personal liability for acts done pursuant to that provision under section 481.051 of the Government Code.

Section 481.077 authorizes the Department of Commerce to create a statewide certified development corporation to carry out the purposes of the federal Small Business Investment Act of 1958, 15 U.S.C. § 697. Gov't Code § 481.077(a). The corporation may contract with the department, counsel, and other advisors its board considers necessary, *id.*, and is required to enter into a written agreement with the department for the provision of professional and management services, *id.* § 481.077(b). Subsection (c) of section 481.077 provides as follows:

A director, officer, or employee of the department is not personally liable for damage, loss, or injury resulting from the performance of the person's services to the statewide certified development corporation under this section or under any contract, commitment, or agreement executed with the corporation.

Your letter implies that the Texas Department of Commerce construes subsection (c) to exempt its directors, officers, and employees from personal liability, but not to exempt from personal liability members of the board of directors of a statewide certified development corporation created pursuant to section 481.077.<sup>1</sup>

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<sup>1</sup>You have not asked us to address section 481.077(c), and therefore we do not construe it here. We do note, however, that we find the use of the term "[a] director" in subsection (c) somewhat perplexing given that the Department of Commerce has an executive director who is referred to as "the executive director," *see* Gov't Code § 481.005, and a policy board whose members are referred to as

You suggest that such board members are exempt from personal liability by virtue of section 481.051 of the Government Code, which provides as follows:

(a) A member of the policy board, the executive director, or any other person acting on behalf of the department in executing a contract, commitment, or agreement *under this subchapter* is not personally liable on the contract, commitment, or agreement.

(b) A member of the policy board, the executive director, or any other person acting on behalf of the department is not personally liable for damage or injury resulting from the performance of duties *under this subchapter*. [Emphasis added.]

As is clear from the language italicized above, the immunity created by section 481.051 is limited to acts performed pursuant to the subchapter in which it appears. Section 481.051 is part of subchapter D of chapter 481 of the Government Code. Section 481.077, on the other hand, is part of Subchapter E of chapter 481 of the Government Code. Thus, section 481.051, by its own terms, does not apply to an individual who acts pursuant to section 481.077. Therefore, section 481.051 does not exempt a member of the board of directors of a statewide certified development corporation created pursuant to section 481.077 from personal liability for acts performed pursuant to section 481.077.

### S U M M A R Y

Section 481.051 of the Government Code does not exempt a member of the board of directors of a statewide certified development corporation created pursuant to section 481.077 of the Government Code from personal liability for acts performed pursuant to section 481.077.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

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(footnote continued)

"members," *id.* § 481.004, but has no board of directors or other directors. It is possible that the term "department" in the phrase "[a] director, officer, or employee of the department" in subsection (c) modifies only the term "employee," and that the terms "director" and "officer" refer to directors and officers of a statewide certified development corporation. You might also ask your general counsel to brief general limitations on the personal liability of corporate directors. See, e.g., 15 TEX. JUR. 3D Corporations §§ 289-290 (1981).